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Federal Communications Commission
Office of Secretary

February 9, 2005

BY HAND DELIVERY

Ms. Marlene Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: Choice Communications, LLC Request for Confidential Treatment of
Maps Illustrating Coverage and Build-out Plans; Choice Communications,
LLC Application for Designation as an Eligible Telecommunications
Carrier, CC Docket No. 96-45 (filed January 13, 2005)

Dear Ms. Dortch:

Choice Communications, LLC ("Choice"), through its attorneys, respectfully requests that the Commission treat as confidential and withhold from public disclosure Choice's maps identifying its current coverage area, maps illustrating in-progress build-out plans, and maps illustrating proposed build-out plans and text describing each of these phases (collectively referred to herein as "the maps").¹ On January 13, 2005, Choice filed an application for designation as an eligible telecommunications carrier ("ETC") in its licensed service area throughout the United States Virgin Islands. Choice intends to file the above-referenced maps in support of its application. These maps, however, contain trade secrets and commercially sensitive materials that Choice cannot disclose to third parties or competitors without putting itself at a significant competitive disadvantage. Accordingly, pursuant to sections 0.457 and 0.459 of the Commission's rules,² Choice requests that the Commission afford confidential treatment to these maps in their entirety.

¹ Per the Telecommunications Access Policy's request, Choice is submitting its request for confidential treatment prior to submitting copies of its coverage and build-out maps.

² 47 C.F.R. §§ 0.457, § 0.459.

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The information for which Choice requests confidential treatment constitutes sensitive commercial information that falls within Exemption 4 of the Freedom of Information Act ("FOIA").³ Exemption 4 allows parties to withhold from public information "trade secrets and commercial or financial information obtained from any person and privileged or confidential-categories of materials not routinely available for public inspection." Applying Exemption 4, the courts have stated that commercial or financial information is confidential if its disclosure will have either of the following effects: (1) impairment of the government's ability to obtain necessary information in the future; or (2) causation of substantial harm to the competitive position of the person from whom the information was obtained.

In the present case, Choice requests confidential treatment of the maps because they contain trade secrets and commercially sensitive information that Choice does not ordinarily disclose, and does not wish to disclose, to third parties. Disclosure of any of these maps would have substantial adverse competitive consequences for Choice. The local exchange market in the United States Virgin Islands is dominated by a single incumbent local exchange carrier ("ILEC"). If Choice is required to release information concerning either its current coverage or its build-out plans, then the ILEC would be able to target the customers that Choice currently serves and those areas that Choice intends to serve in the near future. The ILEC already has a substantial competitive advantage over Choice, and releasing this information would give the ILEC a further unfair market advantage and impede competitive entry in an already underserved market.

Section 0.457(d)(2) of the Commission's rules allows persons submitting materials that they wish to be withheld from public inspection in accordance with Section 552(b)(4) of the FOIA to file a request for non-disclosure. The requirements governing such requests are set forth in section 0.459(b). In accordance with the specifications delineated in that rule, Choice hereby submits the following:

1. IDENTIFICATION OF SPECIFIC INFORMATION FOR WHICH
CONFIDENTIAL TREATMENT IS SOUGHT (SECTION 0.459(B)(1))

Choice seeks confidential information of its current coverage map(s), map(s) illustrating in-progress build-out plans, and map(s) illustrating proposed build-out and all narrative and text accompanying the maps. The information provided in each of these maps constitutes commercially sensitive information that falls within Exemption 4 of the FOIA.

2. IDENTIFICATION OF THE COMMISSION PROCEEDING IN WHICH
THE INFORMATION WAS SUBMITTED OR A DESCRIPTION OF THE
CIRCUMSTANCES GIVING RISE TO THE SUBMISSION (SECTION 0.459(B)(2))

³ See 5 U.S.C. § 552(b)(4); 47 C.F.R. § 0.457(d).

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Choice is filing these maps to supplement its application for designation as an eligible telecommunications carrier filed on January 13, 2005.

3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED (SECTION 0.459(B)(3))

The information contained in Choice's maps is commercially sensitive information and trade secrets that Choice does not ordinarily disclose, and does not wish to disclose, to third parties. The maps for which Choice seeks confidential treatment contain commercial information and trade secrets that competitors could use to Choice's detriment.

4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION (SECTION 0.459(B)(4))

Choice offers various telecommunications services and broadband Internet services, among others, to consumers in the U.S. Virgin Islands. Although these industries generally are competitive throughout the United States, in the U.S. Virgin Islands these services are dominated by a single ILEC. As a result, it is imperative that the Commission afford confidential treatment to these maps such that Choice has an opportunity to compete against the ILEC for customers without being required to expose its competitive plans.

5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM (SECTION 0.459(B)(5))

Release of the information for which Choice requests confidentiality would have a significant impact on Choice's commercial operations and would provide its competition with an unfair competitive advantage. Specifically, the maps identify the areas that Choice currently serves and intends to serve in the near future as well as technology choices and locations. If this information is disclosed publicly, then Choice's competitor will target those areas and can easily impede Choice's efforts to provide competitive services to its current and future customers.

6. IDENTIFICATION OF ANY MEASURES TAKEN TO PREVENT UNAUTHORIZED DISCLOSURE (SECTION 0.459(B)(6))

Choice does not ordinarily disclose information about the locations or size of its customer base, the services that they purchase, or its build-out plans and addressable market. In addition, Choice requires all of its employees, agents and contractors to maintain the confidentiality of this information.

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7. IDENTIFICATION OF WHETHER THE INFORMATION IS
AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE
OF THE INFORMATION TO THIRD PARTIES (SECTION 0.459(B)(7))

The information contained in the maps is not available to the public and has not previously been disclosed to third parties.

8. JUSTIFICATION OF PERIOD DURING WHICH THE SUBMITTING
PARTY ASSERTS THAT THE MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC
DISCLOSURE (SECTION 0.459(B)(8))

Choice respectfully requests that the Commission withhold the information from public inspection indefinitely. Any disclosure could jeopardize Choice's competitive position if released prior to giving Choice an opportunity to obtain—and maintain—customers in the U.S. Virgin Islands.

Please contact me at (202) 887-1234 if you have any questions regarding this request for confidential treatment.

Sincerely,

A handwritten signature in cursive script, reading "Jennifer Kashatus" followed by a stylized flourish.

Jennifer M. Kashatus

cc: Mark Seifert, Assistant Chief, Telecommunications Access Policy Division (Via Hand Delivery and Email)